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Analysis of the Present System of Access to Justice (Evaluating the Existing Situation) In The Light of Parity of Power

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Abstract: **- Access to justice cannot be easily defined. It is a political, legal and rhetorical symbol undeniable power and attractiveness for the subjects of statecraft. Access to justice has an intrinsic nexus with the term justice, in the sense that it is its minimum prerequisite. The notion of justice evokes the cognition of the rule of law, of the resolution of conflicts, of institutions that make law and of those who enforce it; it expresses fairness and the implicit recognition of the principle of equality. Access to justice relates to the ease of entry to the legal institution as also to the nature of the de jure fact that carries its promise. The concept of access to justice has undergone an important transformation; earlier a right of access to judicial protection meant essentially the aggrieved individuals formal right to merely litigate or defend a claim. The reason behind this was that access to justice was a natural right and natural rights did not require affirmative state action. However, with the emergence of the concept of welfare state the right to access to justice has gained special attention and it has become right of effective access to justice. In the modern egalitarian legal system the effective access to justice is regarded as the most basic human right which not only proclaims but guarantees the legal rights of all. In today's world "access to justice" means having recourse to an affordable, quick, satisfactory settlement of disputes. In other words it serves to focus on two basic purposes of legal system – the system by which people may vindicate their rights and / or resolve their disputes under the general auspicious of the state. Thus it requires that the system, firstly, must be equally accessible to all, and secondly, it must lead to the result that are individually and socially just. This paper thus seeks to deal with problems of access to justice from the point of view of power dynamics, by analyzing ancient legal model, present access to justice model and the model provided under the constitution.**

Introduction

Access to justice can be broadly categorized into formal and informal access to justice. The formal access to justice is basically adjudication of disputes by the courts which follow the rules of civil and criminal procedure. This mode of justice delivery system through the primary model, has numerous shortcomings such as cost hurdles, inordinate delays and other technical hurdles like laches and execution of court order. On the other hand informal access to justice includes alternative modes of dispute resolution such as arbitration, conciliation, mediation, Lok Adalat and Nyaya Panchayat. Contrary to what the nomenclature suggest alternative modes are more of a supplementary phenomenon and were devised with that very intent. However, one has to remember that these methods of disputes resolution are required to always adhere to certain basic postulates of dispute resolution – parity of power between the contesting parties being one such postulate. If they in there very conception offer scope for coercion or influence they cannot be consider to be imparting justice. It has to be remembered that justice is the beacon of any dispute resolution method and not just mere settlement of dispute. If mere settlement becomes the beacon, then there comes the element of power imbalance and as a result, the society becomes lop sided leading to tussle and eventual conflict between power holders and power addressees.

Judicial power is involved in the legal ordering of facts. It is under the obligation to approximate, the "is" with the "ought" this ordering is nothing bus performance of administrative duties. The result of such approximation is delivery of justice. Administration of justice has always been held as the paramount duty of the State. The ancient Indian state had laid great emphasis on this duty by making the king the head of the administration. He was also given the judicial powers to take corrective actions in the case of failure of the executive to deliver justice. In both the roles he basically discharges the executive duties of administration of justice. This original set up had a duty based approach. The approach was distorted with the coming of the Mughals and subsequently with the coming of the British. The trans personalized power system was destroyed and was changed into depersonalize power system. After independence India adopted written constitution. The telos of the written

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constitution is to articulate devises for the limitation and control of political power. The state under the Indian constitution like that of ancient Indian constitution is under the duty to intervene in every field to create and maintain a level playing field or parity of powers. It is to balance, powers between power subsystems so that no one can hold more power than others to create a disparity. Power may have base in influence, coercion or head count spectrum. Power in turn affects the nature, growth, contents and modes of implementation of laws. Power movement is obviously of constant relevance to the varying level of efficiency of law. For the purpose of studying and suggesting a new access to justice to approach one needs to start with definition of justice, delivery of justice is highly affected by extra legal power play.

Access to Justice in Ancient India

Prof Dicey, in 1885 regarded supremacy of law as an essential of the "rule of law." He argued that a constitutional democracy requires that law rather than arbitrary will of men hold the pride of place in the political governance. Thousands of years before Prof Dicey had even formulated his theory of rule of law: supremacy of law had found pronounced prominence in the philosophy of Raja dharma, the constitutional law of ancient India. Unlike the unlimited monarchy of the west, ancient Indian jurisprudence advocated the supremacy of Dharma that is rule of law. The law was the king of kings and nothing was superior to law. All dharma merged into the philosophy of Raja dharma and it was therefore, the paramount dharma. It is a classic example of trans personalized power system which did not allow ant personalized or depersonalized power to take over the requirement of justice. Raja dharma was the supreme power of the state; the embodiment of ultimate purpose of human life, and the king was only an instrument to realize this goal of dharma. Raja dharma gave great importance to administration of justice and declared that it was the personal responsibility of the king himself. He was required to preside over the highest court and render justice to the litigants as well as punish the offenders in an impartial manner. The king was required the exercise judicial authority in accordance of the opinion of the judicial officers of the court. However, none could be appointed as a judge in the administration of justice if they did not posses fearlessness, impartiality and independence. They were under a clear mandate not to connive with the king when he acted unjustly. When the king directs and unjust decision in a case, the judge should beseech the king against the order which will lead to injustice and dissuade him from wrongdoing. The judges were under an obligation to protect the dharma even if the decision were against the wishes of the king. The king himself is also liable to be punished for an offence, with one thousands time more penalty than what would be inflicted on an ordinary citizen. Neither the king nor any servant of his shall himself cause a law suit to be initiated or hush up one that has been brought before him by any other person. The responsibility of the king was to ensure people the protection of all laws of the land. The duty of the king was to punish the wrongdoer and to deal with litigants justly brings forth the idea of impartial and fearless administration of civil and criminal justice. It was also significant to note that that the king was required to protect his subjects even against his own officers, the queen, the princess and all others close to him and more than all against his own greed. The position of the king and his officers was based o duty perspective, the power holders were actually the people because they could have the king removed in case he did not perform. The king had personal responsibility for the administration of the justice. While dispensing justice the king was bound by dharma and the opinion of the chief justice and so he was under an obligation to extract the dart of inequity which had entered a lawsuit, by employing the artful experience of judicial investigation. Thus the raja dharma principles lay emphasis on inquisitorial method of dispute resolution so as to decide matters only on legal merit. This helped in maintaining parity of powers or equality of arms between the parties. Though the king was bound by the opinion of the judges on question of law but on the question of fact he had to apply his own mind. The scope of advocacy was limited to assistance by learned scholars. Whether authorized or not, a person acquainted with law was supposed to give his opinion according to the principles or dharma. According to raja dharma if one was injured due to violation of law he was to inform the king. This becomes a fit matter for judicial proceedings. While delivering justice 'Restitutio in integrum' was part of the principles of raja dharma. The king was supposed to restore the stolen property to the owner. If it was not possible to restore the same property he paid the owner the price of the stolen property.

Concept of justice

Justice is devoid of ideological content and it is system specific. Universality of the concept of Justice is based on the based on the assumption that there is a universal audience which shares common values. W. Friedman in his attempt to define "justice "came to the conclusion that justice is an irrational concept. He writes 'but the only claim one could rightfully make would consist in eliminating everything arbitrary save that is implied in affirming the values at the base of the system.' In other words, no values or aspirations can be rationally deduced, the ultimate values or aspirations themselves are non-rational. He uses the Max Weber's concept of relativism. He expresses the impossibility of deriving specific ideals from the sense of justice. He concluded that "Justice" as a generally valid concept, it is the

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goal to which every legal order aspires as a "purposeful enterprise." It can again be acknowledged that there can't be any universal definition of justice that it is a system specific.

This exercise seeks to examine the present model of access to justice prevalent in India and to propose a new access to justice model which demands some workable definition of justice. India has a controlling constitution and the whole Indian legal system has been designed, incorporated and defined by constitution. As already said justice is system specific we need to search for the meaning of justice from the constitutional text itself. Any human being's intuitive gives him feeling of injustice when his rights are abridged. Rights are interests recognised and protected by law. Thus when the law which promises certain rights is not implemented and in other words when promise of law is not answered injustice is said to be done. Justice would thus mean delivering the substantive promise of law. This definition finds place in article 14 of the Indian Constitution. Article 14 of the Indian Constitution reads as follows: "Equality before law --- The state shall not deny to any person equality before the law and equal protection of the laws within the territory of India." The words 'equal protection of the laws,' indicates two things, firstly, every person has been given protection of all laws of the land and secondly, every person within the Indian territory is equally entitled to the protection.

II The Access to Justice Model (As Envisaged)

Administrative Mode

Article 14 casts a duty on the State to deliver the substantial promise of laws, in other words the state has been imposed with duty of delivering justice to all the people within the territory of India. Article 256 of the Indian Constitution provides for two important things firstly, it obliges the State government to implement the laws, which are the laws passed by the State government and the Union government. Secondly, on failure to do so the Union government is under an obligation to direct the State government to implement the laws. Article 256 states the whole mechanism to ensure the implementation of every law by the executive power. It thus envisages the delivery of justice through the administrative mode. The executive power of the Indian states is vested on the Governor which he may exercise directly or through officers subordinate. Officers subordinate means those in service under the Union or the State that is to whom part XIV of Indian Constitution applies, he is suppose to supervise the whole administrative mechanism to see that the law applicable are implemented. There is a parallel mechanism with the President being the executive head in the centre with all the executive powers of the Union being vested upon him and he may exercise directly or through officers subordinate. Officers subordinate would include Governors of their respective states also. Thus the President can supervise the execution of the laws applicable to the State (Parliamentary law or State laws) by giving direction to the Governor and the officers subordinate to the Governor. The administrative mechanism for delivering justice as promised under article 14 is provided in article 256. Whenever the President after exercising his powers under article 256 is of the opinion that a situation has arisen where the government of the State cannot be carried on in accordance to the constitution that is as envisaged in article 365 he can fulfil is executive obligations by invoking article 356. This he may through a proclamation assume all the executive powers of the concerned state. Article 256 creates further obligations to discharge the duty under article 14. Under article 60 the President takes an oath that he shall preserve, protect and defend the constitution. When this provision is read with article 256 one can conclude that the later is not enabling provision but by it also obligates the president to ensure compliance with all laws of the land. Article 256 provides for a correctional and supervisory mode of access to justice mechanism through purely executive action and the ultimate obligation lying with the president and the governors in the states. The whole set up is an example of transpersonalised power system. The power is institutionalised and procedure and rules of it as exercised has also been laid down.

Access to Justice through Courts

Judiciary is an outcome of the dissatisfaction of the working of the administrative authority. The need for a dispassionate judgment of the executive action has given rise to judiciary. The general proceeding of the court of law is to examine the facts or determine the state of facts by which a person has been wronged. The wronged situation is reflective of the failure of the executive to deliver justice. This requires a separate, independent and impartial body to approximate the facts to the requirement of the law. Thus judiciary by playing such correctional role delivers justice. Justice is the legal ordering of facts. Essentially the judiciary while resolving disputes is ensuring implementation of laws. Thus its function is basically administrative in nature. Law is always based on policy when the judiciary implements or reverses the action of the executive or interprets the law and decides whether law is in conformity with the policy or not. Thus judiciary acts a policy controller. Judicial process is under an obligation to deliver the substantive promise of law. This often requires the "ought to" prescribed by law to be clearly state. The judiciary thus authoritatively declares what the law is. In doing so it performs pure judicial function while dispute resolution being administrative function. Article 141 of the Indian Constitution lays down that the law

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declared by the Supreme Court shall be binding within the territory of India. Thus it means that it is only the Supreme Court which discharges pure judicial function under 141. All other subordinate courts including the High Courts perform only pure administrative function. The mandate of article 14 also encompasses the Judiciary. The dispute resolution function of the Indian Courts being purely executive, necessarily denies adversarial mode of justice dispensation. The courts sit to judge the facts which are not in conformity with the requirements of laws. The executive branch has failed to perform its duty of answering to the substantive promise of the laws. This is to be corrected by an independent judicial body in the individual case. The duty is on other branch of the government to undo the wrong committed and thus deliver justice. In other words it fulfils the mandate of article 14. As burden of discharging duty is on the state so the burden of proof lies on the state. Thus article 14 necessarily envisages inquisitorial mode of delivery of justice through courts.

III Adversarial System of Adjudication

The present mode of access to justice though courts operating in India is based on the adversarial mode. The method is characterised by high cost, contributing to a regime of plea bargaining, delay, uncertainty of law, lawyer dominated approach and total lack of parity of powers between the two parties to the litigation. The natural consequence of the mode is that the whole burden of proof is on the parties. Under the prevailing system the right to access to judicial protection essentially means the aggrieved individuals formal right to litigate or defend a claim. The theory behind is that access to justice may be a natural right. Natural rights do not require affirmative state action for their protection. These rights are considered prior to the state. Their preservation required only that the state did not allow them to be infringed by others. The state merely plays the role of facilitator and is not under an obligation to deliver. It is passive towards the realities like ability of the parties to recognize their legal rights and to prosecute and defend them adequately. Justice is like any other commodity to be purchased only by those who could afford its cost and those who could not are considered the only one responsible for their fate. Formal not effective, access to justice and formal not effective equality is all that is sought.

The present model is an inheritance from the British. It was a blind adoption of adversarial system. The British government was based on the principle of exploitation. The source of power enjoyed by the government was not the people. The whole set up was for the benefit of the power-holders and not the power-addressee. Whereas under the Indian Constitution the source of the power is the people and the power holders are the agents of the people. The power which has been delegated to the holders is defined and controlled by the constitution. Under the Indian Constitution all the provisions are based on a duty perspective and non-implementations of which calls for liability. Therefore the inherited mode necessarily can't deliver justice to the people as it was basically created for the benefit of the power wielders and for detriment of the power yielder.

Now this paper shall examine the typical consequences of the adversarial mode and explain how it is based on parity of powers between parties which leads the denial of justice. It violates article 14 and is thus unconstitutional.

- Cost of litigation: the peculiar feature of adversarial system is cost. The costly nature of litigation compels the litigants to abandon just claims and defences. The cost of litigation consists of court fees, fees paid for summons and the other processes, advocates fees and the principle of the losing party paying the cost of the litigation. Such high litigation cost is undoubtedly a barrier to access to justice and is per se unconstitutional practices. The access is purely determined by the financial capacity of the parties. Now the question remains open – what happens to the principle of equality between the parties? Are they at parity under adversarial mode?
- The law of limitation: the effect of this act is that it denies justice after a certain period of time. The said act militates against the provision of article 14 of the constitution. The state cannot deny the protection of laws only on the basis of time period and moreover the Supreme Court in the case of Basheshar Nath v. C.I.T. has clearly stated that nobody can waive his right under article 14. The constitution expressly provides that the state is under unqualified and absolute duty to implement the laws. Constitutional provisions are based on duty perspective not rights perspective. The mandate of article 14 is directed to the state to implement the laws and nowhere provides that the citizens can waive their rights. In other words the act of waiving will not absolve the state from doing its duty. The duty of the state is independent of the acts of the citizens. It can't deny the performance of its rights by enacting laws like the Limitation Act. Thus the law of limitation is unconstitutional. Moreover the mandate of article 14 does not allow the state to escape from its duty by creating disability for the litigants. It is being used by the power holders for denying justice.
- Delays: another peculiar characteristic of adversarial legalism is delay in legal proceedings. The effect of delay especially given the prevailing rates of inflation, can be devastating; it increases the party's cost and puts great pressure on the economically weak to abandon their claims or settle for much less than that to which they are entitled.

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Justice which is not available within a reasonable time is equivalent to inaccessible justice.

- Advocacy: advocates become indispensable aspect of adversarial system. In the adversarial system truth is supposed to emerge from the respective versions of the facts and laws presented by the prosecution and the defence before a neutral judge. Thus the equality of arms principle is violated. The adversarial system does not impose a positive duty on the judge to discover truth and he plays a passive role. Thus the competence of the lawyer and other abilities will determine the delivery of justice. His standing in the bar or in other words the face value will play a decisive role. Lawyer dominated system is naturally inefficient, slow and unpredictable. They may be hyper aggressive and manipulative. The influence spectrum destroys the whole system and creates disparity of power.

The adversary system is markedly inefficient, complex, costly, punitive, and unpredictable method of governance and dispute resolution. It designates situations with conflicting interests of two or more parties who have primary responsibility for gathering and presentation of information. Thus the whole justice delivery is dependent on the capacity of the parties. It doesn't exclusively depend upon the legal merit of the cases. Thus this system completely denies any equality of arms.

New Access to Justice Approach

The discussion on the operating model of access to justice has made it clear that it doesn't answer the requirement of justice. Any model of access to justice has to address the issue parity of powers. Extra legal power affects the content and effectiveness of legal rules. Judicial process has to take into consideration of these power factors if it considers substantive equality as part of justice. The wave of legal reforms has been mere window dressing and has not been able to answer the basic realities of the difference of capabilities between the parties. Perfect equality may be impossible but still attempts can be made to build a system of access to justice based on the principle of parity of powers.

Delivery of justice is basically an executive action. The primary obligation lies on the executive branch popularly identified as the access to justice through administrative mode. On the failure of this body the courts venture to deliver justice as a corrective measure. Indian Constitution is a transpersonalised power system. It is suppose to be in conformity with the general convictions. The same should reflect in the use and exercise of powers conferred under it. To secure justice to all, the Indian Constitution provides the executive mechanism under article 256. It creates certain roles and allocates facilities. But this role is subject to pressure and control of expectation. The pressure and expectations have also been defined under Article 14. The supervisory mechanism has not been working in India. The extra legal power play of the council of minister headed by prime minister is the influence spectrum and is backed by the head count spectrum which has throttled the working of the mechanism. The interpretation that we are a parliamentary form of government has made the head of the executive mere nominal head. The judicial process has to take note of it. The president, governor and the officers subordinate to them should be held personally liable for non performance of their duties. Article 361 requires to be reinterpreted. The immunity provided under the article is for discharge of duties. It does not give immunity from legal sanctions, in case the president and the governor don't follow the mandate of article 14. The president, governor and the officers subordinate to them can be punished under section 166 of the Indian Penal Code. This would make them personally liable.

The present dispute resolution mechanism is a manifestation of private contest power between two unequal sides. As already pointed out that the adversarial system entails play of extra legal power play and doesn't guarantee decision based on pure legal merit. Therefore the adversarial system needs to be given up. The inquisitorial system followed in France, Germany, Italy and other continental countries is more efficient and has been held as a better alternative to the adversarial system. In the inquisitorial system, power to investigate offences rests primarily with the judicial officers (police/judiciary). The judicial police are required to gather evidence for and against the accused in a neutral and objective manner as it is their duty to assist the investigation and the prosecution in discovering truth. In case of civil matters Stuttgart model will be of great help. It provides that the complainant is to only make a report to the court. The entire responsibility of exchanging, collecting relevant documents and other relevant information is on the court. In India such inquisitorial method will go to a large extent in reducing the litigation costs. The courts will collect the documents from the relevant public offices and so on. The courts will not rely on the information or documents provided by the parties but will be engaged in collecting information regarding the matter in issue. In this case the whole burden will lie on the state to justify its action. The Civil Procedure Code has to be amended to remove the provisions relating to sending of summons, producing documentary evidences and sending notices. Section 80 of the code should be deleted. It requires sending of notice to the concerned government department before bringing a suit by the plaintiff. Time limits for the disposal of the case should be fixed. The code states that any issue not raised in the trial will not be allowed to be raised in appeal. This

provision will automatically stand deleted because the whole burden of investigation of the truth is in the court. Thus inquisitorial mode eliminates advocacy all together. The state stands for the victim and makes administrative inquiry into the matter.

Inquisitorial method alone guarantees parity of arms and disposal of matters on pure legal matters. Individuals cannot overcome disability created due to unequal power balances created due to personal qualification, legal knowledge, and finance and so on. These factors of power play can only be eliminated through inquisitorial method. Mere introduction of inquisitorial system is not enough. It should be coupled with personal liability of the court officers for the failure to discharge duty or for improper performance of their duty. The appellate court should take note of the unreasoned order and hold the officers of the lower court liable for it. While reversing the orders the higher courts should also take note of the failures of duty committed by the officers of the sue courts. This will help in identifying the extra legal power factors which have influenced the performance of the duty of the officers and thereby determining the effective implementation of laws. Wherever the lower courts have acted under influence of extra legal power play they should be made answerable for it.

Section 166 of Indian Penal Code includes personal liability of the public servants whenever they act in derogation of their duty. Non performance of duty means disobeying direction of the laws. Section 197 of the Criminal Procedure Code which stands as a bar to section 166 of IPC as it requires prior sanction of the government before prosecuting any government servant should be repealed as it is unconstitutional. It violates the directive under article 14 of the Indian Constitution. According to the mandate of this article which is an aspect of the rule of law as propounded by Dicey, no man is above the law and every person, whatever is his rank or conditions, is subject to the jurisdiction of ordinary courts.

Justice Marshall defining judicial power said that judicial powers extend to stating authoritatively what the law is. The definition emphasizes on the declaratory character of judicial power. Counter to this opinion is the view of Justice Holmes "the prophesies of what the courts will do in fact and nothing more pretentious are what I mean by the law." The meaning of the statement forcefully indicates that the law for today is to be found in the next case rather than the last. But the Indian Constitution doesn't support the views of Justice Holmes. Article 141 states that only law declared by the Supreme Court shall be binding. This provision eliminates the definition of Justice Holmes and doesn't give scope for law making by the judiciary. Next it requires the courts to adopt a principle oriented approach rather than precedent oriented approach. It means the courts have to declare the principle of law in unequivocal terms. The principle will enshrine the legal reasoning behind the decision. And then shall apply the principle to the particular fact situation before them in other words would apply deductive reasoning. This will create safeguards against inconsistent, unpredictable and uncertain decisions.

The last but not the least issue of access to justice would be the question of enforcement of rights by the judiciary. Whenever any law or executive action is challenged in the court of law, the court should pass stay orders against the operation of the law or further executive action. As the state is under primary obligation of equality before law and equal protection of laws therefore the state should be called upon to prove that the law or executive action is in conformity with the constitutional provisions. This is only possible when the courts passes stay orders against the state action. However where the illegal state action has already been consummated then he court should apply principle of "restitutio in integrum" means to restore the parties to their original position or status. It means to put the party into the condition they would otherwise have been but for the non performance of the state executive powers.

IV CONCLUSION

Aspiration of justice is as old as humanity itself. Endless voyage have been made to discover its meaning. There is a common string which joins all political system that is they all aim at securing justice. Indian constitution also aims at the same. It seeks to achieve justice by delivering substantive promise of the laws of the land. Administration of justice has always been measured in terms of the performance of the judicial branch. The truth is that the Indian Constitution casts this duty on all the three branches of the government. Indian Constitution sets up a particular power system. It has institutionalised the exercise of powers, demarcating the field of action, procedures, allocation of facilities and defining the role expectation. The whole transpersonalised power set up is based on the duty perspective calling for liability is case of non performance of duty. The destruction of the power mechanism has made justice highly inaccessible in India. The extra legal power flows have to be identified and eliminated. Above all this it is to be kept in mind that the state has primary obligation to deliver justice and can't shift this burden to the individual through adversarial system or through other means. The legislative power holders should also keep this in mind while making laws. Indian Constitution has given the ancient rajadharma system a rebirth which was distorted by the successive invaders. The invaders came with new power systems which did not give primacy to the welfare of the people but was directed for the

benefit and convenience of the power holders. But even after adopting the written constitution the old administrative mechanism has not been given up. Thus this inherited administrative mechanism needs to be judged in the light of the constitutional power set up and should be discarded whenever these subsystems do not answer the requirement of the larger system.

Reference

[1] SINGH & ASSOCIATES, India: Access to Justice in India, (Jan. 29, 2021, 10.30 AM), https://www.mondaq.com/india/human-rights/369048.
[2] JOHN RAWLS , A THEORY OF JUSTICE (Harvard University Press, Edition 1997 p11).
[3] PIZZI AND MARFIOTI: THE NEW ITALIAN CODE OF CRIMINAL PROCEDURE : THE DIFFICULTIES OF BUILDING AN ADVERSARIAL TRIAL SYSTEM ON A CIVIL LAW FOUNDATION (Yale Law Journal, Winter 1992 Vol. 17 No. 1, p.9).
[4] JULIUS STONE, THE PROVINCE AND FUNCTION OF LAW (University of Pennsylvania Law ReviewVol. 95, No. 5, May, 1947).
[5] M.RAMA JOIS, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA: ANCIENT LEGAL, JUDICIAL AND CONSTITUTIONAL SYSTEM (N.M. Tripathy Pvt. Ltd, Vol. 2, 1st ed. 1984).
[6] M.RAMA JOIS, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA: ANCIENT LEGAL, JUDICIAL AND CONSTITUTIONAL SYSTEM (N.M. Tripathy Pvt. Ltd, Vol. 2, 1st ed. 1984).
[7] CAPPILLETTI, M., GARTH, BRYANT,ACCESS TO JUSTICE, THE FLORENCE ACCESS TO JUSTICE PROJECT, SIJTHOFF AND NOORDOFF, MILAN (Vol I, 1978, P. 9)
[8] H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA: A CRITICAL COMMENTARY 1287 (N. M. Tripathy, Bombay, 4th ed. 1991).
[9] H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA: A CRITICAL COMMENTARY 1287 (N M Tripathy, Bombay, 4th edn. 1991.
[10] JULIUS STONE, THE PROVINCE AND FUNCTION OF LAW (University of Pennsylvania Law Review
[11] Vol. 95, No. 5 May, 1947).
[12] JULIUS STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE (Universal Law Publishing Co. Pvt. Ltd. Delhi, Chapter 13. p.597).
[13] M. CAPPELLETTI, ACCESS TO JUSTICE, MERGING ISSUES AND PERSPECTIVES.
[14] 1959 AIR 149, (1959) SCR SUPL. (1) 528.
[15] JULIUS STONE, SOCIAL DIMENSIONS OF LAW AND JUSTICE (Universal Law Publishing Co. Pvt. Ltd. Delhi, Chapter 13. p.597).
[16] M.RAMA JOIS, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA: ANCIENT LEGAL, JUDICIAL AND CONSTITUTIONAL SYSTEM (N.M. Tripathy Pvt. Ltd, Vol. 2, 1st ed. 1984).
[17] M.RAMA JOIS, LEGAL AND CONSTITUTIONAL HISTORY OF INDIA: ANCIENT LEGAL, JUDICIAL AND CONSTITUTIONAL SYSTEM (N.M. Tripathy Pvt. Ltd, Vol. 2, 1st ed. 1984).